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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,892

01/24/2006

William David Lewis

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01/02/2008

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/565,892

Applicant(s)

LEWIS ET AL.

Examiner

Brent T. O'Hern

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 41-57 and 61-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-57 and 61-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 December 2007 has been entered.

### ***Claims***

2. Claims 41-57 and 61-63 are pending.

### ***Amended Specification/Drawings***

3. The amended Specification and Drawings submitted 10 December 2007 are satisfactory. It is noted that FIG-11 has been amended and not FIG-12, contrary to Applicant's contention on p. 8, para. 3 in Applicant's Paper filed 10 December 2007.

Clarification and/or correction is required.

## **WITHDRAWN REJECTIONS**

4. The 35 U.S.C. 112, second paragraph, rejections of claims 47 and 56-57 of record in the Office Action mailed 14 August 2007, page 2, paragraph 6 have been withdrawn due to Applicant's amendments in the Paper filed 10 December 2007.

5. The 35 U.S.C. 112, second paragraph, rejection of claim 63 of record in the Office Action mailed 14 August 2007, page 3, paragraph 7 have been withdrawn due to Applicant's amendments in the Paper filed 10 December 2007.

6. The 35 U.S.C. 102 rejections of claims 41-42 and 44-57 and 61-63 as being anticipated by Altman et al. (US 4,067,071) of record in the Office Action mailed 14 August 2007, page 3, paragraph 8 have been withdrawn due to Applicant's amendments in the Paper filed 10 December 2007.

7. The 35 U.S.C. 103 rejection of claim 43 as being unpatentable over Altman et al. (US 4,067,071) in view of Swanson (US 4,414,385) of record in the Office Action mailed 14 August 2007, page 7, paragraph 9 have been withdrawn due to Applicant's amendments in the Paper filed 10 December 2007.

#### NEW REJECTIONS

##### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 41-57 and 61-63 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the **written description** requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

9. The phrases "wherein said core extends between said upper member and said lower member to support substantially the entire undersurface of said upper member" in claim 41, lines 6-8, "whereby the core supports substantially an entire undersurface of said upper member" in claim 62, lines 4-5 and "a composite resin-stone filler separating

said upper and lower members and supporting substantially an entire underside of said upper member" in claim 63, lines 4-6 are **new matter**. The original disclosure does not have support for said language or precisely define what is meant by said language, specifically the "support substantially", "supports substantially" and "supporting substantially" language with respect to the "an entire undersurface" and the "an entire underside".

**10.** The phrase "**acrylic cap**" in claim 47, lines 2-3 is **new matter** and is not supported by the original disclosure.

**11.** Claims 41-57 and 61-63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**12.** The terms "support substantially" in claim 41 line 7, "supports substantially" in claim 62 line 5 and "supporting substantially" claim 63 line 6 are **relative terms** which renders the claims indefinite. The above terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. A person having ordinary skill in the art at the time Applicant's invention was made may interpret substantially as being 1, 10, 50 or 75% while another person would interpret the same as not be substantially but rather 90, 95 or 99% being substantially.

**13.** Furthermore, it is unclear whether support/supports/supporting means mechanically supporting, covering, or something else. Furthermore, it is noted that

Applicant has not presented any mechanical load distribution illustrating where the load bearing forces are present.

14. The phrase “wherein a ratio of thickness of the acrylonitrile butadiene styrene material to the acrylic cap is 9:1” in claim 47, lines 2-3 is vague and indefinite since it is unclear whether the “cap” is referring to something that someone wears, a polymer, a wall or something else and is where is the “thickness”.

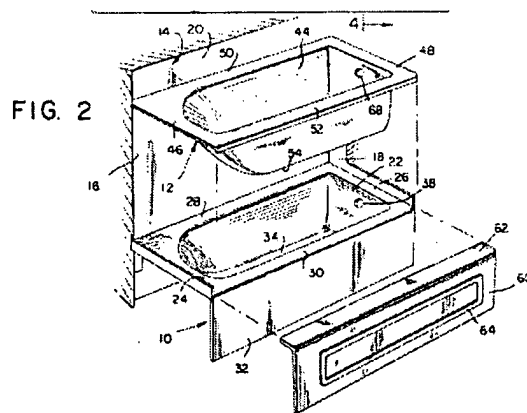
15. Claim 47 recites the limitation “the acrylic cap” in lines 2-3. There is **insufficient antecedent basis** for this limitation in the claim.

Clarification and/or correction is required.

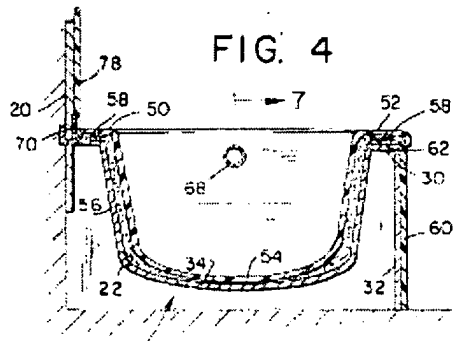
#### ***Claim Rejections - 35 USC § 102***

16. Claims 41-42, 48, 52-57 and 61-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Altman et al. (US 4,067,071).

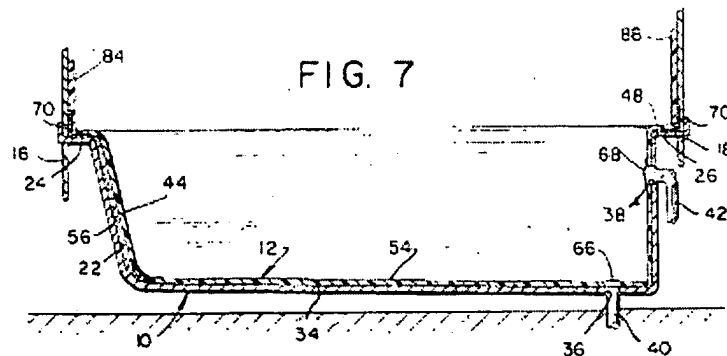
Regarding claims 41 and 52-56, Altman ('071) teaches a composite article having an upper member of plastics material having an undersurface (See col. 4, ll. 3-7 and FIG-2, #12 with an undersurface.) and



a lower member of plastics material that together form an outer shell (See FIG-2, #60, #10 and col. 7, ll. 3-5.), and an inner core of filler within the shell (See FIGs 4 and 7, #56.), the upper member being spaced from the lower member to define a gap therebetween,



the gap being constructed and arranged to separate the upper member from the lower member, to receive the core, and to provide strength and rigidity to the article and wherein the core extends between the upper member and the lower member to support substantially the entire undersurface of the upper member (See FIGs 4 and 7 and col. 6, ll. 11-17 wherein the upper/lower members are spaced with core #56 between and wherein the core substantially supports the undersurface. Furthermore, Applicant has not disclosed what substantially means.).



The phrases "wherein said upper and lower members further comprise means to aid locating said members relative to one another during moulding of said core" in claim 52, lines 2-3, "wherein said locating means comprise co-operating formations on said upper and lower members" in claim 53, lines 2-3, "wherein said co-operating formations are configured to provide a hole in a base wall of the article" in claim 54, lines 2-3, "wherein said lower member further comprises a means to release air trapped between said members during moulding of said core" in claim 55, lines 2-3, and "wherein said lower member further comprises a means to assist distribution of said filler between said members during moulding of said core" in claim 56, lines 2-3 are **process limitations** in product claims and hence not given any patentable weight since patentability of a product does not depend on its method of production (*see MPEP § 2173.05(p)*). Furthermore, it is noted that the above language refers to conditions, including mental perceptions, that exist during processing but are not specific, clear, definite and positively set forth structural limitations of the claimed product.

The phrases "to support substantially the entire undersurface of said upper member" in claim 41, lines 7-8, "whereby the core supports substantially an entire undersurface of said upper member" in claim 62, lines 4-5 and "supporting substantially an entire underside of said upper member" in claim 63, line 6 are deemed to be statements with regard to the **intended use** and are not further limiting in so far as the structure is concerned (*see MPEP 2111.02*). Furthermore, as discussed above, Altman ('071) does teach these intended use limitations.



Regarding claim 42, Altman ('071) teaches wherein the filler is a composite resin-stone mix (*See col. 5, l. 58 to col. 6, l. 4.*).

Regarding claims 44-45, Altman ('071) teaches wherein the upper member has an outer layer of hardwearing, scratch resistant material (*See col. 4, ll. 12-23.*).

The phrase "for absorbing impacts occurring during use of the article" in claim 45, lines 2-3 is deemed to be a statement with regard to the **intended use** and is not further limiting in so far as the structure is concerned (*see MPEP 2111.02*).

Regarding claim 48, Altman ('071) teaches wherein the lower member is made of acrylonitrile butadiene styrene (*See col. 4, ll. 12-23 and col. 7, ll. 3-5.*).

Regarding claim 57, Altman ('071) teaches wherein said lower member is provided with an array of interlinked recessed regions that allow said filler material to flow freely between said members (*See FIGs 4 and 7, recession #56 between the members and around the periphery.*).

Regarding claim 61, Altman ('071) teaches wherein the article comprises a shower tray (*See col. 8, ll. 62-65 and FIG-1, entire FIG with shower head #98.*).



Regarding claim 63, Altman ('071) teaches a shower tray comprising an upper member of plastics material providing an outer surface of the tray and configured to

define a central well, an upper wall surrounding the well and a side wall depending from the upper wall (*See FIGs 1-2, with floor and walls and shower head at #98.*), a lower member of plastics material on an underside of the tray (*See FIG-2, #60, #10 and col. 7, ll. 3-5.*), and a composite resin-stone filler separating the upper and lower members and a composite resin-stone filler separating said upper and lower members and supporting substantially an entire underside of the upper member (*See FIG-4 and col. 6, ll. 11-17 wherein the upper/lower members are spaced with core #56 between and wherein the core substantially supports the undersurface. Furthermore, Applicant has not disclosed what substantially means.*).

***Claim Rejections - 35 USC § 103***

17. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altman et al. (US 4,067,071) in view of Swanson (US 4,414,385).

Altman ('071) teaches wherein the resin-stone mix comprises a mixture of limestone, calcium carbonate and a catalyst (*See col. 5, l. 55 to col. 6, l. 10 and col. 4, ll. 39-55.*), however, fails to expressly disclose wherein the resin is dicyclopentadiene.

However, Swanson ('385) discloses wherein the resin is dicyclopentadiene (*See col. 1, ll. 51-58.*) for the purpose of providing a material with superior resistance to chemical attack (*See col. 1, ll. 49-50.*).

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to provide an article with a dicyclopentadiene resin as taught by Swanson ('385) in Altman ('071) in order to provide a material with

superior resistance to chemical attack. Furthermore, Applicant has not disclosed the criticality of using the DCPD resin.

**18.** Claims 44-47 and 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altman et al. (US 4,067,071).

Regarding claims 46-47, Altman ('071) teaches the article discussed above, however, fails to expressly disclose wherein the upper member is an acrylic capped acrylonitrile butadiene styrene material.

However, Altman ('071) teaches wherein acrylonitrile butadiene styrene materials are well known for use in showers/baths and articles having a thickness (*See col. 4, ll. 12-23.*) for the purpose of providing structures that are moldable, have smooth surfaces, and are pleasing to view (*See col. 4, ll. 12-23.*).

Therefore, it would have been obvious to use an acrylic capped acrylonitrile butadiene styrene material for the various members in order to provide a moldable, smooth and pleasing article.

Regarding claim 49, Altman ('071) teaches wherein the inner core has a variable thickness (*See FIG-4, variable thickness of #56.*).

Regarding claims 50-51, Altman ('071) teaches the article discussed above, however, fails to expressly disclose wherein sockets are provided in an underside of the lower member for receiving legs for raising the article above a surface on which it is installed.

However, Altman ('071) teaches teaches wherein sockets for legs can be provided (*See FIG-7, #40 and FIG-4, #32 and #20 wherein said members can clearly*

*receive legs.*) for the purpose of raising the article (*See FIGs 7 and 4.*). Furthermore, it was well known at the time Applicant's invention was made that showers have drains at the bottom and sockets/legs are means for providing piping and proper drainage.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to provide sockets/legs on the bottom of the structure in order to raise the article and provide effective piping and drainage.

### **ANSWERS TO APPLICANT'S ARGUMENTS**

19. In response to Applicant's argument (*p. 9, para. 3 to p. 10 para. 3 of Applicant's Paper filed 15 June 2007*) that the liner in Altman ('071) is not designed to separate from the liner and the core does not substantially support the entire undersurface of the liner, it is firstly noted that whatever reason may or may not exist for designing Altman's ('071) structure does not matter since Altman's ('071) claims are not pending. Furthermore, Altman ('071) clearly teaches wherein the upper/lower members are spaced with core #56 between and wherein the core substantially supports the undersurface (*See FIG-4 and col. 6, ll. 11-17.*). Furthermore, Applicant has not disclosed what substantially means.

20. In response to Applicant's argument (*p. 11, para. 1 to p. 12 para. 1 of Applicant's Paper filed 15 June 2007*) regarding Applicant's amended claims, it is noted that said limitations are currently treated as process limitations as discussed above.

21. In response to Applicant's argument (*p. 12, paras. 2-3 of Applicant's Paper filed 15 June 2007*) regarding the 35 USC 102 rejection of claims 48 and 50-51, it is noted that said claims are now rejected under 35 USC 103 as discussed above.

22. In response to Applicant's argument (*p. 12, para. 4 to p. 13, para. 1 of Applicant's Paper filed 15 June 2007*) that there are not interlinked recessed regions per claim 57, it is noted Altman ('071) clearly teaches the regions (*See FIGs 4 and 7, recession #56 between the members and around the periphery.*).

23. In response to Applicant's argument (*p. 13, para. 2 of Applicant's Paper filed 15 June 2007*) that the structure is not made of plastic, it noted that Applicant has not presented any evidence to support said assertion (*See col. 4, ll. 3-20 and col. 7, ll. 3-5.*).

24. In response to Applicant's argument (*p. 13, para. 3 to p. 17, para. 1 of Applicant's Paper filed 15 June 2007*) that Swanson ('385) is non-analogous art, it is noted that both Altman ('071) and Swanson ('385) are directed towards cement-like formulations. Furthermore, if one were to follow Applicant's reasoning then Applicant claims would be non analogous art from the other claims and Applicant would be prohibited from claiming anything other than plastic shower materials. Additionally, Applicant's citation of boiler plate language without analysis is noted.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on Monday, Tuesday and Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-0996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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*BTO*

Brent T O'Hern  
Examiner  
Art Unit 1794  
December 27, 2007

*Nasser Ahmad*  
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PRIMARY EXAMINER  
12/31/07